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C O N F I D E N T I A L SECTION 01 OF 07 NEW DELHI 007061

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PASS TO NRC

E.O. 12958: DECL: 11/06/2014

TAGS: [PARM](#) [PREL](#) [KNNP](#) [ETTC](#) [IN](#) [NSSP](#)

SUBJECT: NSSP PHASE TWO: CHARTING THE COURSE

REF: A. NEW DELHI 7013

[B](#). NEW DELHI 6500

[C](#). NEW DELHI 6733

[D](#). NEW DELHI 6599

Classified By: DCM Robert O. Blake, Jr., Reasons 1.4 (B,D).

[1](#). (C) Summary: After reviewing achievements made under Phase One (Ref A), the Next Steps in Strategic Partnership (NSSP) Implementation Group discussed the way forward on Phase Two, including legislation, enforcement, outreach, and training to strengthen export controls; adherence to MCTR and NSG Guidelines; nuclear safety; space cooperation; and missile defense. The Indians commented that work is already well-advanced on issues such as developing a framework for stronger export controls. Considerable effort, however, must be sustained to ensure effective implementation such as introducing legislation that adequately covers "intangible" technology transfers and provides for "catch-all" controls. Other issues, such as formulation of an Indian missile defense doctrine, remain in the beginning stage. The Indian side agreed to a further discussion of Phase Two issues in connection with the November 18-19 High-Tech Cooperation Group (HTCG) meeting. See para 21 for a GOI-drafted list of issues for follow-up by the GOI and USG. End Summary.

[2](#). (U) A/S Rocca led the USG delegation comprised of Commerce Deputy Assistant Secretary Borman, DCM, PolCouns, and representatives from the State Department's Bureaus for South Asia, Non-Proliferation, and Arms Control, the Department of Defense, as well as the Science and Customs offices at Embassy New Delhi. With similarly broad representation, the GOI delegation was led by MEA Additional Secretary for International Security Meera Shankar, with

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participation from MEA Joint Secretary (Americas) S. Jaishankar, other MEA officials from the Americas and Disarmament Divisions as well as representatives from the Department of Atomic Energy, Department of Space, and the Defense Ministry's Defense Research and Development Organization (DRDO). Because of scheduling constraints, not all participants were able to attend all sessions. Participant list follows in para 21.

Ongoing End-User Verification

[3](#). (C) In the October 21 session of the Implementation Group meeting, Joint Secretary Jaishankar expressed the GOI desire to respond in a timely manner to the end-user verification requests which Commerce U/S Juster gave the GOI on October 11 (Reftel B), but requested better information on the following issues:

-- Better contact information for the companies, e.g., name of specific subsidiary, location, etc. (He noted the GOI used to receive this information regularly in the past);

-- Purchase reference numbers to allow cases to be cross-checked between the Indian and US systems;

-- An indicative list of what information the US requires for post-shipment verification;

-- Information about Indian license requests that have been denied in order to have a better understanding of what is acceptable;

-- A contact person for export issues. (Note: New MEA/Americas Under Secretary Raj Srivastava will be the GOI POC and Embassy New Delhi expects a DOC export attache to arrive shortly.)

-- Amendment of the footnote to Commerce's missile catch-all regulation, citing India's missile program as an entity of concern.

[4](#). (C) Commerce Deputy Assistant Secretary for Export Administration Matthew Borman responded that a number of these requests can be accommodated and some, such as the request for purchase numbers, will need review. On amending the missile catch-all footnote, Borman said the amendment has

not yet been published, but said he expected the rule, including removal of the missile footnote, to be published the week of October 25.

## Phase 2: GOI Steps on Legislation, Enforcement, Outreach, Training

15. (C) On strengthening the legislative framework for export controls, Russell noted that UNSCR 1540 calls on all countries to adopt the same kind of export control laws and practices that are outlined in the NSSP. Shankar expressed confidence in the GOI system of export controls, but stressed that the resources India devotes to controls for high-tech goods should be proportional to its trade in that area, which she described as "infinitesimal." She noted that the GOI has other government priorities and that steps taken need to be reasonable given resource constraints. Shankar presented a non-paper on "India's System of Controls Over Exports of Dual-Use Materials, Equipment and Technology" (Reftel C).

16. (C) In the October 20 session, Shankar outlined the ongoing process of strengthening GOI export controls through legislative, policy, and administrative modifications. Legislative amendments include revising the Customs and Finance Acts to make violations punishable by imprisonment. Shankar offered to share GOI draft legislation, pending appropriate internal clearances. Policy changes include mandatory licensing for export, re-export, and transit of all "Special Chemicals, Organisms, Materials, Equipment and Technologies" (SCOMET) items, including damaged, defective, or used items; controls on intangible technology related to SCOMET items; and a "catch all" provision which affords the GOI latitude in interpreting which dual-use items may be used for suspect activities. Administrative controls include better inter-ministerial coordination through high-level and working-level groups.

17. (C) As the GOI strengthens export controls, Shankar relayed private sector concern that new regulations would obstruct business, not proliferation. Russell noted that all countries face this concern but offered that governments such as Hong Kong, which have tightened controls, have found that high tech trade has flourished, boosted by confidence that only legitimate businesses would be willing to operate in a regulated business environment.

## Preventive Enforcement

18. (C) Acknowledging India's basic legal framework governing export controls, A/S Rocca also suggested four areas in need of enhanced legislation and enforcement: intangible technology transfers, brokering, transit and re-export, and "catch-all" controls. DAS Borman gave the GOI a non-paper with suggestions for ways to strengthen GOI preventive enforcement capabilities.

19. (C) Under Secretary for Disarmament and International Security Affairs Nutan Kapoor listed GOI efforts to enhance their enforcement capabilities: some pre-license checks on end-users, risk assessments, post-shipment/installation verification, and random inspections, all of which may result in confiscation or other penalties. These measures also apply to brokering activities of authorized customs house agents. To prevent the unauthorized transfer of intangible technology, Indian scientists going abroad for training must get GOI clearance, as do scholars, while visa applications for visiting scientists and scholars are subject to inter-ministerial approval. On re-exports, Kapoor said that under all circumstances, SCOMET items can only be exported with a license and that the GOI undertakes pre-license checks. Finally, training for Customs officials is ongoing. For example, India and the US have had 16 exchanges of export control experts since 2000, four in the past year. Russell underscored the value of EXBS exchanges, and offered to provide more training as India increases its staffing in this area. As this is an evolving process, Shankar also suggested examining best practices from other countries and regimes.

## Outreach Initiatives Complicated by Visa Problems

10. (C) In the October 20 session, Shankar reported that relevant GOI departments, including the MEA, are in the process of conducting outreach to industry and related associations. She also suggested that industry-to-industry outreach would be constructive. However, the GOI is awaiting a response from the USG on several proposals for industry-to-industry exchanges, according to Jaishankar, complicated by the "hangover effect" of difficulties Indian scientists face in obtaining visas. He recalled cases where individual scientists were granted visas but were then barred from visiting the labs that had invited them. He said he spoke to A/S for Consular Affairs Maura Harty about the

matter during her recent visit to New Delhi. "The ongoing problem of visas poses a serious operational constraint on what we're trying to do," he said. A/S Rocca assured him that the US is aware of these problems and is trying to streamline this process, which requires clearances from several agencies before a visa is issued.

#### Adherence to MTCR and NSG Guidelines

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11. (C) An important step required of India in Phase Two is agreeing to adhere to the MTCR Guidelines and Annex and the NSG Guidelines, and its associated trigger list and dual-use list. Russell described the MTCR as a non-treaty political understanding among 34 states sharing common interests in the non-proliferation of missiles, rocket and unmanned air vehicle systems and technology. Other countries can "adhere" to the MTCR unilaterally without being a member of the regime, as have Israel and Romania, she said.

12. (C) Drawing from prepared points, Russell went on to explain that Part 1 of the NSG Guidelines requires that for transfers of Trigger List items or technology, the recipient state must have IAEA safeguards on all its nuclear facilities ("full-scope safeguards"). Part 2 of the Guidelines governs exports of nuclear-related dual-use equipment, technology and materials. Actual adherence is not required in Phase Two, but rather, India should provide a firm commitment in Phase Two to adhere to these regimes in Phase Three. Such a commitment would be in writing, similar to the policy statements that India provided in Phase One. Actual adherence would come in Phase Three, and would involve the related actions by India in that phase, including: harmonization of its national control list with the export control lists of the regimes; and enactment of relevant legislation to conform to the accepted standard among regime members and adherents, including on intangible technology transfers and catch-all.

13. (C) In response, GOI Department of Atomic Energy representative noted that the India already has stringent mechanisms in place that are analogous to the NSG guidelines, such as the Proscribed Equipment List, Proscribed Substances List, and Radioactive Items List.

#### US Steps on License Requirements, Nuke Safety, Space, MD

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14. (C) DAS Borman listed what the US has committed to do under Phase Two: Remove license requirements for EAR 999/99 items to all safeguarded facilities in India; expand NRC dialogue to cover topics in Phase Two; and suggested a US-India cooperation on satellite development, production, marketing and operating. Jaishankar asked for a paper clarifying what removal of EAR 99 license requirements entails, rather than "having to interpret US law for ourselves." Removal of EAR 99 license requirements was the subject of a separate meeting between Borman, NP representative, and GOI officials (septel).

#### Request for Flexibility on Nuclear Safety

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15. (C) In the October 20 session, Shankar expressed strong interest in examining how some US controls can be relaxed in Phase Two, specifically for NSG controlled safety-related equipment, perhaps under the NSG safety exemption. "Flexibility on this would make it easier to demonstrate progress to our constituency, so that they see that we are getting something in exchange for revising our laws," she argued. The Department of Atomic Energy representative expressed hope that cooperation will be expanded beyond the nuclear island and include training related to fourth generation nuclear reactors. Russell noted that the trend in the NSG has been to strengthen the safety exemption rather than be more lenient. Jaishankar added that he wanted to explore training opportunities for Indian scientists in nuclear safety and hopes to expand the dialogue on this issue to include the US Department of Energy.

#### Expanded Cooperation on Civil Space Programs

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16. (C) On expanding cooperation on civil space programs, DAS Borman said that Phase Three will involve the signing of a Space Launch Agreement, similar to that which the US signed with Russia and Ukraine. Jaishankar expressed interest in this agreement, which in Phase Three would allow the launch of US satellites as well as indigenous satellites with US components. Department of Space representative reaffirmed GOI intention to revise ISRO's Request for Proposals to require disclosure of US content and compliance with US licensing conditions (Reftel D). Responding to ISRO questions about the US commitment to space cooperation, PolCouns underscored the end-state we seek for full scope US-Indian civilian space cooperation, including ability to

launch US satellites and satellites with US components.

17. (C) Demonstrating the societal benefits of India's space program, Space Department representative said that the GOI recently initiated a program to link village council members around the country via satellite and communication equipment provided by ISRO. ISRO representative also detailed several pending requests in the area of space cooperation. DAS Borman suggested the GOI provide a list of the sort of specific cooperation that ISRO would like to see in Phase Two as well as a list of the pending requests mentioned. Finally, when asked when all ISRO subsidiaries would be removed from the Entity List, Borman responded that such an issue could not be reviewed until after Phase Three.

#### Missile Defense

18. (C) On continuing the missile defense dialogue, in the October 20 session, Shankar said the GOI will first undertake an internal exploratory meeting with its agencies. Responding to the Missile Defense Agency (MDA) proposal (made at the June 2004 Defense Policy Group meeting) to conduct a series of planning events leading to a command post exercise in January 2006, Jaishankar said the GOI agrees with the proposal and would like to conduct the first planning meeting in the first quarter of CY 2005. Regarding the US offer to sell India PAC-2 missile defense capability, Jaishankar said the GOI wants to "telescope" (combine) briefings on PAC-2 and PAC-3, so the right set of people can look at the issue in its entirety. OSD India Country Director Alverson replied that he would convey the GOI requests to DOD officials in Washington. Alverson noted that the MDA activities would be useful to India in helping India determine for itself what are its missile defense requirements, which should be the first element of conversation between our experts on the sale of a missile defense system.

#### Issues for Follow-up

19. (C) During the course of the 2-day discussions, the following issues arose for further follow-up:

For joint action by the USG and GOI:

- Agreement on date for initial planning meeting with MDA on missile defense command post exercise;

For action by the GOI:

- Formal response to U/S Grossman's letter on offer to sell the PAC-2 system;

- Copies of draft GOI legislation, laws, and procedures on export controls and preventive enforcement;

- GOI paper to clarify pending issues and proposals on space cooperation; and

- Formal letter of interest about the Container Security Initiative (CSI).

For action by the USG:

- Provide comments on status of GOI list of pending cases of onward proliferation;

- Clarification about implications of removing restrictions on EAR 99 and XX 999 items without licenses for ISRO subsidiaries;

- Provide list of items that will be permitted as exports from the US to India under NSSP Phases One, Two, and Three, pursuant to EAR amendments;

- Notification of removal of missile from Commerce, missile catch-all regulation;

- Response to GOI inquiry on specific industry outreach exchanges;

- Provide more contact information about companies (contact name, address, and telephone number) for end-use visits;

- Provide information about denied license applications;

- Provide purchase reference numbers for items for which a license has been approved; (this won't be feasible, according to DOC)

- Provide information on status of Import Certificates under the 1984 MOU and their continuing relevance;

- Response to suggestion on harmonizing IAEA Convention on Nuclear Safety and NSG Guidelines on nuclear safety.

Consider licensing of safety-related items for safeguarded plants;

-- Response to GOI proposal to expand cooperation on reactor safety issues in DAE-DOE/NRC format;

-- Provide position paper on adherence steps to NSG and MTCR Guidelines;

-- Provide information about Russian and Ukrainian Space Launch Agreements;

-- Respond to request to combine discussion of PAC-2 with classified briefing on PAC-3;

-- Request to facilitate visas for Indian scientists;

-- Request to provide more detail about information on which sanctions against Indian scientists Prasad and Surendra are based;

-- Request to provide information about status of dismantling AQ Khan network; and

-- Provide updates about changes to the Iran Sanctions Bill.

#### Upcoming Meetings

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120. (U) The next meetings for follow-up include the High Tech Cooperation Group (HTCG, November 18-19) in Washington, the meeting with MDA in the 1st quarter of CY 2005 to begin planning for the command post exercise, another round of the Strategic Stability Dialogue (Washington-November), and another round of Nonproliferation and Security Talks (Washington-November). The US side urged the Indian team to come to the November HTCG meeting with papers responding to papers shared by the US on export control legislation, preventive enforcement, government-industry outreach, and space cooperation.

#### Participants

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#### 121. (U) USG Participants:

State Assistant Secretary for South Asia Christina Rocca  
Commerce Deputy Assistant Secretary for Export Administration  
Matthew Borman (Oct. 21)  
Embassy New Delhi DCM Bob Blake  
Embassy Political Counselor Geoffrey Pyatt  
Embassy Science Counselor Marco DiCapua (Oct. 21)  
Embassy DHS Customs Representative Jim Dozier (Oct. 21)  
State Non-Proliferation Bureau Caroline Russell  
State Arms Control Bureau Tom McIlvain  
State India DeskOff Jim Seevers  
Defense, OSD Country Director Jim Alverson (Oct. 21)  
Embassy PolMilOff Stacy Gilbert (notetaker)

#### GOI Participants:

MEA Additional Secretary (International Security) Meera Shankar (Oct. 20)  
MEA Joint Secretary (Americas) S. Jaishankar  
MEA Director (Americas) Renu Pall  
MEA Director (Disarmament and Int'l Security) Venu Rajamony (Oct. 20)  
MEA Deputy Secretary (Americas) Santosh Jha  
MEA Under Secretary (Disarmament and Int'l Security) Nutan Kapoor  
MOD Defense Research and Development Organization, Dr. Anup Chatterjee  
Dept of Atomic Energy, Dr. S.D. Misra  
Dept of Atomic Energy, Scientific Officer, Dr. A.B. Awati  
Dept of Space, ISRO Director, Dr. Rajeev Lochan  
Consultant to MEA, Dr. V. Siddhartha (Oct. 20)

122. (U) A/S Rocca and Commerce DAS Borman cleared this cable.  
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